

STAFF REVIEW AND RECOMMENDATION

Variance Case #: V2011-25

Legistar #: 20110563

Board of Zoning Appeals Hearing: Monday, July 25th, 2011 – 6:00 p.m.

Applicant: David C. Kirk
Troutman Sanders LLP
as attorney for Walmart
600 Peachtree Street, Suite 5200
Atlanta, GA 30308

Property Owner: Inyoung S. Boyd
Boyd Georgia Property, LLC
736 Johnson Ferry Road
Suite C220
Marietta, GA 30068

Address: 1137 Powder Springs Street

Land Lot: 00670 **District:** 17 **Parcel:** 0020

Council Ward: 2 **Existing Zoning:** CRC (Community Retail Commercial)

Special Exception / Special Use / Variance(s) Requested:

1. Variance to reduce the required 8' sidewalk for the existing 4' sidewalk along Bellemeade Drive. [Section 708.16(B)(45)(7)]
2. Variance to reduce the width of the internal pedestrian walkway from 8' to 5'. [Section 708.16(B)(45)(8)]
3. Variance to reduce the buffer along the eastern property line from 40' to 15'. [Section 706.16(I)]
4. Variance to reduce the buffer along the southern property line from 40' to 0'. [Section 706.16(I)]
5. Variance to reduce the side yard setback along the northeastern property line from 15' to 0'. [Section 708.16(H)]
6. Variance to reduce the rear yard setback from 35' to 15'. [Section 708.16(H)]
7. Variance to reduce the side yard setback along the western property line from 15' to 0'. [Section 708.16(H)]
8. Variance to reduce the setback along the southern property line for an accessory structure from 25' to 5'. [Section 708.16(F)(1)]
9. Variance to reduce the required Site Density Factor from 197.25 units to 65 units. [Section 712.08(D)(4)]
10. Variance to increase the maximum allowable impervious surface coverage from 80% to 85%. [Section 706.16(H)]

11. Variance to reduce the minimum parking dimensions from 9'x20' to 9.5'x18'. [Section 716.08(C) and 716.08(C)(4)]
12. Variance to waive the permanent wall or solid fence not less than six feet in height as part of the buffer adjacent to residential properties. [Section 710.05(D)]
13. Variance to waive the 6' planting bed along the front façade. [Section 708.16(45)(4)]

Statement of Fact

As per section 720.03 of the Comprehensive Development Code of Marietta, the Board of Zoning Appeals may alter or modify the application of any such provision in the Development Code because of unnecessary hardship if doing so shall be in accordance with the general purpose and intent of these regulations, or amendments thereto, and only in the event the board determines that by such alteration or modification unnecessary hardship may be avoided and the public health, safety, morals and general welfare is properly secured and protected. In granting any variance the board of zoning appeals shall designate such conditions in connection therewith as will, in its opinion, secure substantially the objectives of these regulations and may designate conditions to be performed or met by the user or property owner, out of regard for the public health, safety, comfort, convenience, and general welfare of the community, including safeguards for, with respect to light, air, areas of occupancy, density of population and conformity to any master plan guiding the future development of the city. The development costs of the applicant as they pertain to the strict compliance with a regulation may not be the primary reason for granting a variance.

Criteria:

1. Exceptional or extraordinary circumstances or conditions *are/are not* applicable to the development of the site that do not apply generally to sites in the same zoning district.
2. Granting the application *is/is not* necessary for the preservation and enjoyment of a substantial property right of the applicant, and to prevent unreasonable property loss or unnecessary hardship.
3. Granting the application *will/will not* be detrimental or injurious to property or improvements in the vicinity of the development site, or to the public health, safety, or general welfare.

PICTURES



1137 Powder Springs Street



Powder Springs Street frontage



Bellemeade Drive frontage



Southern property line



Eastern buffer area



Staff Recommendation:

David C. Kirk, attorney for Walmart, is requesting multiple variances for Bellemeade Shopping Center, located at 1137 Powder Springs Street. Located at the southeastern corner of Bellemeade Drive and Powder Springs Street, this property contains many small tenant suites and an empty anchor space that was occupied by Food Depot until earlier this year. The subject property and all outparcels are zoned CRC (Community Retail Commercial). Natchez Trace, a community of quadplexes, lies directly to the east and is zoned RA-8 (Single Family Residential – Attached). Belle Chase Apartments, zoned RM-12 in Cobb County, are located directly to the south.

Walmart has expressed interest in redeveloping this shopping center to accommodate one of their Walmart Neighborhood Market stores. These stores function as grocery stores, contain approximately 42,000 s.f., and are smaller than a typical Walmart Discount Store (108,000 s.f.) or Walmart Supercenter (185,000 s.f.). The current shopping center is quite aged and does not conform to many of the City's current codes. The applicant is proposing improvements aimed at meeting their own needs as well as the City's ordinances wherever possible. However, multiple variances are needed in order to redevelop the property as proposed.

The applicant has indicated in meetings with City staff that during the renovation process the existing anchor space would be completely demolished and rebuilt. The new building would fit mostly within the footprint of the previous anchor space; however, a small projection would be built off the southeastern corner to accommodate truck loading docks. The newly constructed building will be occupied only by Walmart and, will exceed 40,000 s.f., prompting the City's Big Box regulations [Section 708.16(45)]. These regulations are designed to achieve quality buildings with appealing architectural components, as well as sites that are easily accessible by pedestrians and automobiles alike.

#1 Reduction of the required 8' sidewalk for the existing 4' sidewalk along Bellemeade Drive.

Approval. This requirement is a result of the Big Box regulations and is designed to accommodate the amount of pedestrian traffic typically drawn to large retailers. However, there is not enough width within the existing right-of-way to provide an 8' wide sidewalk. In addition, the City's Public Works Department just recently completed a 4' sidewalk project along Bellemeade Drive. **Staff recommends approval of this variance.**

#2 Reduction in the width of the internal pedestrian walkway from 8' to 5'.

Approval. Another component of the Big Box regulations requires internal pedestrian walkways leading from the public sidewalk to the store entrance. Also designed to aid with the amount of pedestrian traffic drawn to large retailers, these walkways will provide a safer alternative to walking within the drive aisles, whether from the public sidewalk or from an automobile. Due to area constraints within the parking lot, providing the full 8' walkway plus a landscape strip with enough area to contain trees along the walkway is problematic. The applicant's design engineers have been able to provide a 5' wide walkway and 6' landscaped area. A narrower walkway than one required by the Ordinance is preferable to none at all. **Staff recommends approval of this variance.**

#3 Reduction of the buffer along the eastern property line from 40' to 15'.

Approval. Within the CRC district, a 40' landscaped buffer is required along any property line adjacent to residential property. Buffers should consist of evergreen trees and shrubs paired with a 6 foot opaque fence. The buffer along the eastern property line adjacent to the Natchez Trace community (RA-8) is approximately 15 feet wide and contains evergreen trees and a chain link fence. The proposed project is not expected to interfere with this area, and the applicant wishes to leave the buffer area 'as-is.'

The landscaped buffer is intended to protect adjacent residential property – Natchez Trace – from negative effects of commercial developments such as light spillover and noise. Although the buffer on the commercial property is only 15 feet wide, the trees extend approximately 135 feet into the residential property. This results in a 150' wide buffer for the protection of the residences to the east. Since the existing buffer will adequately protect the residential properties to the east, **staff recommends approval of this variance.**

#4 Reduction of the buffer along the southern property line from 40' to 0'.

Approval. A 40' buffer is required along the southern property line where the commercial property abuts an apartment complex, zoned RM-12 in Cobb County. However, the existing access driveway to rear of the building and to the detention pond prevents the establishment of a buffer. There is a mature stand of trees approximately 50 feet wide on the residential property along the property line

that acts as a buffer. The applicant could not feasibly reconfigure the site to provide the buffer without cutting off access to the rear of the building and the detention pond. In addition, the residential property to the south is currently protected from possible negative effects of the development by a grouping of trees along the property line. As a result, **staff recommends approval of this variance.**

#5 Reduction of the side yard setback along the northeastern property line from 15' to 0'.

Approval. The portion of the shopping center closest to Powder Springs Street (labeled “1-Story Block Building”) is flush with the side property line, leaving no room for the required 15 foot side setback. The only options for providing the setback would be to either demolish a portion of the building or acquire 15 feet of the property to the north. Considering that a reduction in the setback for this portion of the site will not be problematic for any adjacent property owners or impact the future development of the parcel to the north, **staff recommends approval of this variance.**

#6 Reduction of the rear yard setback from 35' to 15'.

Partial approval. The existing shopping center currently encroaches on the rear setback. When the existing building is demolished, the new building must comply with all current zoning codes, including setbacks and buffers. The applicant wishes to maintain a 15 foot setback along the rear property line. It is unclear why the applicant has requested 15 feet when the proposed building will be at least 25 feet away from the rear. Considering the request for the reduction in the rear buffer paired with the fact that the driveway will be required to be at least 20 feet wide (for access to the building and detention pond), **staff recommends a reduction in the rear setback to only 20 feet.**

#7 Reduction of the side yard setback along the western property line from 15' to 0'.

Approval. The portion of the shopping center closest to Bellemeade Drive (labeled “Dollar General”) is flush with the side property line, leaving no room for a 15 foot side setback. Similar to the northeastern portion of the site, the only options for providing the setback would be to demolish a portion of the building or acquire additional property from the abutting property to the west. However, in this case there is not enough room for both properties to provide the required 15 foot side setback. Considering that a reduction in the side setback for this portion of the site will not be problematic for any adjacent property owners, **staff recommends approval of this variance.**

#8 Reduction of the setback for an accessory structure from 25' to 5'.

Approval with a stipulation. This variance request addresses the hatched area on the site plan at the very southeastern portion of the site, labeled “13'x65' Bale & Pallet and Organic Dumpster Area.” It is unclear whether this area constitutes an accessory structure or an outdoor storage area. Regulations for CRC require that accessory structures be located at least 25 feet from residential property. This area is shown within 5 feet of the southern property line and 18 feet of the eastern property line. Outdoor storage areas must be screened by a 6 foot solid (privacy) fence. The stacking of pallets may be potentially noisy but should not be any more disruptive than the truck loading dock nearby. However, requiring a 15' setback and a 6' opaque fence surrounding the area may aid with noise and keep the area orderly. As a result, **staff recommends approval of the setback variance to 15 ft. with the stipulation that the area be enclosed by a 6' privacy fence.**

#9 Reduction of the Site Density Factor from 197.25 units to 65 units.

Partial approval. Redevelopment of an entire site requires adherence to the Tree Protection and Landscaping Ordinance (Section 712.08), which requires a certain number of tree units for every

acre of the site. For sites over 5 acres in size, twenty-five (25) units per acre are required. Since this site is 7.89 acres, 197.25 units are required for this site to satisfy the tree ordinance. Due to parking requirements, building coverage, buffer reductions and pavement coverage on the site, the applicant is unable to provide the necessary units in the available plantable areas. The application states that they are able to provide 65 units in a mixture of existing and new trees.

Requests to reduce tree density have been heard before the Board of Zoning Appeals in the past. A variance requested in August 2001 by Walker School (700 Cobb Parkway North) was granted that allowed the school to omit nine acres of athletic fields from tree density calculations, effectively reducing the required tree density by 225 units (V2001-22). In March 2006, BZA approved a variance for Wellstar Health System that reduced the units per acre from 25 to 20 (V2006-04), resulting in a reduction of 227.95 units on the 45.59 acre campus.

However, the City's Tree Ordinance provides an alternative in the form of payment into the City's Tree Replacement Fund, set up in 2004, for sites physically unable to plant the necessary tree units on the site. The Tree Fund is used to purchase, plant, and maintain trees on public property. This option was drafted specifically for hardship situations such as this.

The redevelopment of this site will only be physically disturbing area approximately 3.5 acres of the site, for which the Tree Ordinance would require a tree density of 20 units per acre. As a result, **staff recommends partial approval of this request, and recommends calculating required units at 20 units per acre for the disturbed area only. Any tree density that could not be planted on site would have to be accounted for by paying into the Alternative Tree Fund.**

#10 Increase in the maximum allowable impervious surface coverage from 80% to 85%.

Approval. The applicant is proposing to reduce the existing impervious coverage (88% to 85%) by constructing tree islands and landscape strips, but the proposed coverage will still exceed that allowed by the CRC zoning district (80%). The applicant also plans to reduce the total number of parking spaces on the site from 350 to 286 (285 parking spaces are required according to Table J. of Section 716.06). As a result, **staff recommends approval of this variance.**

#11 Reduction in the minimum parking dimensions from 9'x20' to 9.5'x18'.

Approval. Section 716.08 covering Surface Parking Standards requires all parking spaces to be at least 9'x20'. The applicant is requesting to reduce the stall size to 9.5'x18' to allow for more efficient use of the site. The current Traffic Engineering Handbook by the Institute of Traffic Engineers recommends different parking stall dimensions based on vehicle operator (valet vs. self serve) and turnover rates. The recommended parking stall dimension for this higher-turnover use is 8'9"x18'. This measurement is also mentioned as the most common. Since this reduction should not cause any negative effects, **staff recommends approval of this variance request.**

#12 Elimination of the 6' solid fence not as part of the buffer adjacent to residential properties.

Approval. Chain link fences currently line driveways along the eastern buffer line and the southern property line. Section 710.05 Buffers typically require a 6' opaque fence, which may be waived by the Planning and Zoning Director if the vegetation provides an adequate screen. Since the existing evergreen vegetation is fairly dense, an opaque fence may not extend much additional protection to the neighboring residences. As a result, **staff recommends approval of the variance that would allow the chain link fence remain as is.**

#13 Elimination of the 6' planting bed along the front façade.

Approval with a stipulation. Another requirement of the Big Box regulations is the provision of a 6' wide planter bed along the front façade. This planter bed is to lie between the building foundation and an 8' sidewalk and may be interrupted for arcades or entryways only. The proposed Walmart contains approximately 200 lineal feet of frontage against the parking lot; approximately 90 lineal feet appear to contain an area devoted to the store entrance. This leaves 100 lineal feet that to incorporate the planter bed. However, only 30 lineal feet contains the required planter bed because the applicant contends that this area is needed for employees to load shopping carts into the storage area. Since granting this variance will likely result in a more orderly appearance in the containment of shopping carts, **staff recommends approval of this variance with the stipulation that the 30' planter bed provided as shown on the submitted plan.**

To summarize, staff recommends the following:

1. **Approval to reduce the sidewalk along Bellemeade Drive from 8' to 4.'**
2. **Approval to reduce the internal walkway from 8' to 5.'**
3. **Approval to reduce the eastern buffer from 40' to 15.'**
4. **Approval to reduce the southern buffer from 40' to 0.'**
5. **Approval to reduce the northeastern side setback from 15' to 0.'**
6. **Approval to reduce the rear setback from 35' to 20' (instead of the 15' requested).**
7. **Approval to reduce the western side setback from 15' to 0.'**
8. **Approval to reduce the setback for an accessory structure from 25' to 15' with a stipulation that the area be enclosed by a 6' privacy fence.**
9. **Denial of the request to reduce the Site Density Factor from 197.25 to 65, but since this is a partial redevelopment of the site, recommends calculating required units at 20 units per acre for the disturbed area only.**
10. **Approval to increase the maximum impervious surface from 80% to 85%.**
11. **Approval to reduce the parking dimensions from 9'x20' to 9.5'x18.'**
12. **Approval to eliminate the 6' solid fence requirement and to allow the chain link fence to remain.**
13. **Approval to eliminate the 6' planting bed requirement with the stipulation that 30' of planter be provided as shown on the submitted plan.**